

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Commercial Mobile Radio Services)	WT Docket No. 09-66
Market Competition)	

NTELOS Reply Comments

NTELOS Inc., on behalf of itself and its wireless operating subsidiaries, hereby submits these reply comments in response to the FCC's request for information to assist it in evaluating the state of competition among providers of CMRS services.

Introduction

The past few years have seen significant consolidation in the wireless industry and the simultaneous rise of Commission policies that favor large carriers over mid-tier carriers, rural carriers, and new entrants. In their initial comments, MetroPCS, Cricket, RTG, and others have described the barriers encountered by members of the wireless industry, like NTELOS, who are not national carriers. The Commission's role in this consolidating industry is to assure that the inputs necessary for competition remain available to all carriers; to maintain a fair playing field; and to foster competition. Unless FCC policies change, smaller carriers will be squeezed out by the national carriers and consumers will suffer. The Commission must ensure that rural and regional carriers -- and new entrants -- have reasonable access to spectrum, the ability to purchase a range of handsets that meet the needs of consumers, the ability to offer their customers voice and data roaming services at just and reasonable rates, and the ability to sell their services despite the national carriers' exclusive marketing deals.

I. NTELOS Provides a Competitive Alternative in Rural Markets

NTELOS holds PCS licenses to operate in twenty-nine basic trading areas with a total licensed population of approximately 8.8 million. NTELOS has built out its network in twenty of those basic trading areas and covers 5.5 million POPs. NTELOS now serves almost 445,000 retail wireless subscribers representing approximately 8% penetration of NTELOS' total covered population.

NTELOS began acquiring PCS spectrum in western Virginia and West Virginia in the mid-90s and introduced service in western Virginia in late 1997, in West Virginia in late 1998, and in eastern Virginia (Richmond, Hampton Roads, Norfolk, Virginia Beach) in 2000. It is significant to note that much of NTELOS' PCS Spectrum was acquired after the first auction in partitions from Primeco (in western Virginia) and from GTE (in West Virginia). Both these entities are now part of Verizon Wireless. The larger carriers sold their entire PCS spectrum holdings in these markets to NTELOS. It was clear at the time that they were focused on the urban areas and were not interested in serving a rural geography. NTELOS, on the other hand, has been steadily building out mountainous and relatively sparsely populated communities in Virginia and West Virginia for many years.

NTELOS continues to make significant investments in its wireless network. In 2005-2007, NTELOS added 186 new cell sites to increase its total sites to 1,023. NTELOS has 84 company-owned retail stores, many more than its competitors have in NTELOS' region. Its call centers are all located in western Virginia. NTELOS' retail presence through its stores, along with customer care centers in Waynesboro, Covington, and Daleville Virginia, are in keeping with NTELOS' long-standing commitment to be a part of local communities it serves.

In August of 2007, NTELOS announced that it would upgrade virtually its entire network for mobile broadband services using EVDO Rev. A. EVDO data services are at speeds 10 times faster than those available on NTELOS' 1x data network – the wireless equivalent of moving from dial-up to DSL.

In order to accomplish the EVDO upgrade, NTELOS undertook the largest capital expenditure in its 112-year history. In 2008, NTELOS completed the EVDO deployment in western Virginia and West Virginia. On July 9, 2009, NTELOS announced the completion of the EVDO broadband upgrade in its Virginia East market, including Richmond, Hampton Roads, Norfolk, and Virginia Beach.

In the course of the EVDO deployment, NTELOS replaced the wireless switches in its western Virginia and West Virginia networks; upgraded the existing switches in eastern Virginia; and changed out equipment at over 1,000 cell sites. The multi-million dollar investment in broadband means faster download speeds of large, graphic-rich files, ringtones, music and games and quicker functioning Smartphones and BlackBerrys. NTELOS also added 160 new sites to its network in 2008, representing an increase in sites of over 15%. It has added 23 new cell sites so far in 2009. These new sites allow for more complete network coverage, improved call reception and enhanced in-building service.

NTELOS offers a wide array of voice and data plans to meet the specific needs of each of its customers. Plans that offer unlimited calling on the NTELOS' network are available to both prepay and postpay customers. NTELOS also offers national plans to all of its customers – prepay and postpay -- featuring nationwide long distance and no roaming via buckets of daytime, mobile-to-mobile, and night and weekend minutes. Customers can choose from a variety of added-value features like integrated voicemail and data services such as location-based services,

text and picture messaging, games, ring-tones, ring-back tones, news, entertainment and hundreds of BREW applications.

In June of 2009, NTELOS introduced the most affordable unlimited prepaid calling plan in its region. NTELOS' new Frawg Unlimited Wireless service offers unlimited, anytime calling starting at just \$30 a month without a contract, credit check, or activation fee. Customers can choose from a variety of phones as well as a range of Frawg plans, including plans with unlimited text messaging and data usage.

II. NTELOS' Customers are Harmed by Handset Exclusivity Arrangements

Although NTELOS offers a wide range of plans and services, a critical part of each customer's buying decision is based on the handsets that NTELOS can offer. Consumers are bombarded by advertisements from the larger carriers touting the benefits of exclusive handsets. Although NTELOS offers handsets with similar features, it is an uphill battle to convince consumers to try a handset other than those that are heavily advertised. Consequently, even with very competitive rate plans and services, NTELOS loses a significant number of sales because it is unable to offer the exclusive handsets. As a number of carriers and consumer groups as well as members of Congress have urged, the FCC should examine these exclusivity practices and take action to stop them.

Because of the way that the national carriers do the software programming on their exclusive handsets, customers who own those handsets have difficulty activating those handsets on other networks. This situation compounds the difficulty that smaller carriers have in attracting customers from the national carriers. NTELOS is trialing a capability to "unlock" handsets that its customers have purchased from other carriers, but even the best unlocking software is ineffective on a number of the exclusive sets and only works to unlock the voice

components of phones. The FCC should prohibit the programming of handsets in a way that prevents their use on other networks.

Handset issues go beyond the problem that exclusive models are unavailable to regional carriers or their customers. CDMA handset manufacturers program one of three versions of software into each handset they make. One version is proprietary to Verizon; one version is proprietary to Sprint; and the third version of the software is used by all the remaining CDMA carriers. The recent consolidation of the industry has resulted in the disappearance of Western Wireless, RCC, Dobson, Suncom, ALLTEL, and Centennial from the marketplace. With consolidation comes a concern that handset manufacturers will decide it is not worth their while to produce the third version of the handset software. This could have a devastating affect on smaller carriers' ability to offer handsets with the newest features and technology.

III. Access to Just and Reasonable Roaming is Key to a Competitive Marketplace

Recent acquisitions have changed the wireless market from one in which a number of mid-tier regional and rural carriers were vying to become major competitors – thereby assuring consumers of many competitive choices in a healthy marketplace – to one in which a very few gigantic entities enjoy unquestioned dominion and are able to exercise their power in the roaming market. The anti-competitive stance taken by national carriers on roaming has a direct and detrimental affect on the market for local retail wireless services. NTELOS offers plans with nationwide coverage in order to be competitive with carriers that have national networks. With only a regional network, NTELOS relies on reasonable roaming arrangements as a vital input to its national plans.

In ALLTEL/Verizon merger proceeding, Verizon indicated that roaming prices had fallen to roughly \$0.05 -- and that Verizon provides Sprint with low roaming rates and volume

discounts. Recently, Verizon and TracFone announced an agreement for TracFone to use Verizon's network for TracFone's "Straight Talk" product. While these two carriers have not revealed the price TracFone pays for using the Verizon network, the retail price for Straight Talk strongly indicates that Verizon is charging TracFone close to Verizon's cost. Confidentiality provisions in its roaming agreements prevent NTELOS from revealing the pricing in its Verizon roaming agreement, but it is very different from the \$0.05 quoted by Verizon in the ALLTEL proceeding. In that proceeding, NTELOS and other non-national carriers urged the FCC to require Verizon and ALLTEL to provide copies of all of their roaming agreements so that the Commission could see the basis for concerns about unreasonable and discriminatory treatment on roaming. The FCC declined to review the roaming agreements.

With NTELOS' significant investment in EVDO, broadband data roaming is a critical need. NTELOS' roaming agreement with ALLTEL provided for such data roaming. Verizon, on the other hand, had refused to consider broadband data roaming for NTELOS' customers. Although the four year commitment offered by Verizon for honoring ALLTEL roaming agreements is not long enough, NTELOS believed that Verizon would honor the terms of NTELOS' roaming agreement with ALLTEL on broadband data roaming. NTELOS was naïve and, as the Commission knows, Verizon is objecting to honoring the non-price terms of ALLTEL roaming agreements.

IV. Smaller Carriers are Harmed When National Carriers Insist on Exclusivity for Sale Agents

In ALLTEL/Verizon proceeding, NTELOS warned of the harm to competition that would result from that transaction. However, the harm to NTELOS has been even wider ranging than NTELOS anticipated.

NTELOS has had years of experience with the large carriers locking up prime retail locations in malls and strip malls with leases that grant them exclusivity for selling wireless products and services. The “big box” stores sell national carriers exclusively and will not consider regional carriers. But Verizon’s purchase of ALLTEL presented NTELOS with a new challenge.

NTELOS’ largest sales agent offered its customers NTELOS products and services as well as the products and services of ALLTEL. Shortly after Verizon acquired ALLTEL, Verizon gave that sales agent an ultimatum. Either sell exclusively for Verizon or Verizon would terminate them as an agent. The agent had no choice but to stop selling for NTELOS effective July 1, 2009. Yet that agent would have been happy to continue to sell the products of both carriers – and had a demonstrated history of being able to do so.

NTELOS has worked hard through the years to develop a network of smaller agents and to find viable locations for its own retail stores. Losing its largest agent, with which NTELOS had a relationship going back many years, because of Verizon’s ultimatum is very discouraging to NTELOS.

V. Access to Spectrum on Reasonable Terms is Vital to Smaller Carriers

In the *Wireless Competition Twelfth Report*, the Commission noted the key role of the mid-tier regional and rural carriers in the marketplace.¹ But in recent spectrum auctions, these carriers have effectively been denied the opportunity to obtain the additional spectrum they vitally need in order to grow their business and remain viable competitors. In Auction 73, AT&T and Verizon ended up with about \$16 billion of the nearly \$19 billion of spectrum purchased.

¹ *Wireless Competition Twelfth Report* at para. 18-19 and *passim*.

Mid-tier regional and rural carriers cannot remain vigorous competitors if their ability to grow and develop is choked off by a lack of meaningful access to spectrum. NTELOS' average spectrum holdings are only 23 MHz and, in the eastern Virginia markets (the most competitive and populated served by NTELOS), it has only 20 MHz of spectrum. In contrast, Verizon has over 90 MHz of spectrum in the eastern Virginia markets, including the A and B Block cellular licenses as well as 700 MHz licenses. In recent auctions, NTELOS was quickly priced out of the eastern Virginia markets by the large carriers.

The cellular licenses, along with the recently auctioned 700 MHz licenses, are the optimum spectrum ranges for delivering mobile wireless services. The national carriers, and especially Verizon and AT&T, have the lion's share of this "beachfront property" spectrum, leaving regional and smaller carriers like NTELOS to compete using PCS and AWS band spectrum. The PCS bands used by NTELOS have inferior propagation characteristics in comparison to cellular and 700 and so require significantly more cell sites to achieve the same coverage and quality. NTELOS has had to work to overcome this disadvantage as it built out the mountainous regions of Virginia and West Virginia. In-building penetration is more challenging in the PCS spectrum ranges, which is a critical factor as more and more customers "cut the cord" and so rely on their mobile phone service in their homes and offices.

The disparity in spectrum holdings between the smaller carriers and the national carriers is a strategic disadvantage for NTELOS and similar carriers, making us more and more vulnerable over time. Wireless vendors develop applications, features, and services based primarily on the estimated demand of the large carriers. Verizon has over 85 MHz of spectrum in almost all metropolitan areas in the United States. To the extent that the carriers which drive the development of new capabilities are not spectrum constrained, developers are free to create


new services without regard to the amount of spectrum needed to deploy those services.

NTELOS, with an average of only 23 MHz of spectrum, fears it will be unable to keep pace with customer demand for services that use large amounts of spectrum.

Conclusion

The issues raised in this docket by the smaller carriers are of great importance to the continued competitiveness and evolution of the wireless industry in this country. NTELOS urges the FCC to take these concerns seriously and to institute a proceeding or proceedings to examine the substantial barriers to entry and growth that are becoming the hallmarks of our industry.

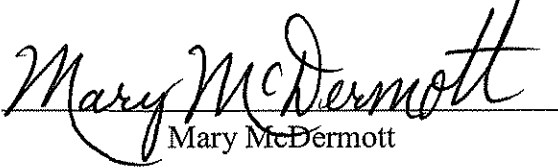
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CERTIFICATE OF SERVICE

I, Mary McDermott, certify that a copy of the foregoing NTELOS Reply Comments in WT Docket No. 09-66 was mailed postage prepaid or via electronic email to the following parties on this 13th day of July, 2009.


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